

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

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|                             |   |                           |
|-----------------------------|---|---------------------------|
| WFM PRIVATE LABEL, L.P.,    | ) |                           |
|                             | ) |                           |
| Cross-Claimant,             | ) |                           |
|                             | ) |                           |
| Vs.                         | ) |                           |
|                             | ) |                           |
| 1048547 ONTARIO, INC. D/B/A | ) | Case No. A-14-CA-01013-SS |
| SKOTIDAKIS GOAT FARM,       | ) |                           |
|                             | ) |                           |
| Cross-Defendant.            | ) |                           |
|                             | ) |                           |
| And Related Counter-Action. | ) |                           |
|                             | ) |                           |
|                             | ) |                           |

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**CROSS-DEFENDANT'S RESPONSE TO WFM PRIVATE LABEL L.P.'S  
PARTIAL MOTION TO DISMISS**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

COMES NOW, 1048547 Ontario, Inc. d/b/a Skotidakis Goat Farm (“SGF” or “Skotidakis”), by and through the undersigned counsel of record, and files this Response to WFM Private Label, L.P.’s (“Plaintiff” or “WFMPL”) Partial Motion to Dismiss and respectfully shows the following:

**I. ARGUMENT**

In the Partial Motion to Dismiss, WFMPL requests the Court to dismiss SGF’s claim for declaratory relief. In its Original Counterclaim, SGF sought declaratory relief concerning the parties’ respective obligations under the Vendor Agreement at issue and, specifically, WFMPL’s obligation to indemnify or release SGF for damages caused by or arising from WFMPL’s breach of the Vendor Agreement. (Dkt. 33 at 13, ¶¶ 21-22).

WFMPL argues that this claim should be dismissed because it “simply repackages [SGF’S] affirmative defenses and breach of contract counterclaim” and “asks the Court to grant relief on issues that will be decided in the context of the parties’ other claims.” (Dkt. 39 at 6). To be sure, WFMPL has sued SGF for breach of contract in regard to the indemnity provisions in the Vendor Agreement. (Dkt. 37 at 12-13, ¶¶ 57-72). Likewise, SGF has sued WFMPL for breach of contract in regard to its unilateral and improper termination of the Vendor Agreement resulting in damages to SGF. (Dkt. 33 at 12-13, ¶¶ 13-20).

In light of WFMPL’s concession that the parties’ respective obligations under the indemnity and/or release provisions of the Vendor Agreement are already before the Court and “will be decided in the context of the parties’ other claims,” SGF has filed its First Amended Counterclaim contemporaneously with this Response which eliminates its request for declaratory relief. Accordingly, SGF urges the Court to deny WFMPL’s Partial Motion to Dismiss as moot. *See Moreno v. Fannie Mae*, No. EP-13-CV-00029-DCG, 2013 U.S. Dist. LEXIS 195717, at \*3 (W.D. Tex. Mar. 15, 2013) (“If an amended complaint does not incorporate the earlier pleading, a court may deny as moot a motion to dismiss that was filed before the operative amended complaint.”)

## **II. CONCLUSION**

For the reasons discussed herein, Skotidakis respectfully requests that the Court deny as moot WFMPL’s Partial Motion to Dismiss (Dkt. 39), and for such other relief to which Cross-Defendant may be justly entitled.

Respectfully submitted,

/s/ Robert A. Hawkins  
S. Cass Weiland  
Texas Bar No. 21081300  
Robert A. Hawkins  
Texas Bar No. 00796726  
SQUIRE PATTON BOGGS (US) LLP  
2000 McKinney Ave, Suite 1700  
Dallas, Texas 75201  
Ph: (214) 758-1500  
Fax: (214) 758-1550  
[Email: cass.weiland@squirepb.com](mailto:cass.weiland@squirepb.com)  
[robert.hawkins@squirepb.com](mailto:robert.hawkins@squirepb.com)

ATTORNEYS FOR DEFENDANT  
1048547 ONTARIO, INC. d/b/a  
SKOTIDAKIS GOAT FARM

**CERTIFICATE OF SERVICE**

This is to certify that the foregoing has been served via electronic mail, by and through the Court's ECF system, upon filing of same on this 3rd day of May, 2017.

/s/ Robert A. Hawkins  
Robert A. Hawkins